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No. 85-1441

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DONNA WASHINGTON; HELENE STONE INDIVIDUALLY AND AS NEXT FRIEND TO MARLO STONE; JEANETTE MAWAE, INDIVIDUALLY AND AS NEXT FRIEND TO JOSETTE MAWAE; ROBERTA DEMELLO; ALFRED DEMELLO, JR., INDIVIDUALLY AND AS NEXT FRIEND TO ROXANNE NAKAMURA, AND ON BEHALF OF THEMSELVES AND ALL THOSE SIMILARLY SITUATED,

Petitioners,

v.

THE STATE OF HAWAII AND FIREMAN'S FUND INSURANCE COMPANIES

Respondents,

On Petition for Writ of Certiorari to the Supreme Court of the State of Hawaii

BRIEF OF RESPONDENT STATE OF HAWAII IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether there is a rational basis for denying public assistance recipients no-fault automobile insurance benefits from free policies issued to themselves or to other public assistance recipients.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
COUNTERSTATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	3
CONCLUSION	8

TABLE OF AUTHORITIES

CASES: *Page*

Dandridge v. Williams, 397 U.S. 471, 485 (1970) 5

Lindsey v. National Carbonic Gas Co., 220 U.S. 61, 78 5

McGowen v. Maryland, 366 U.S. 420, 426 5

Metropolis Theater Co. v. City of Chicago, 228 U.S. 61, 69-70 5

Shibuya v. Architects Hawaii, Ltd., 65 Haw. 26, 35, 647 P. 2d 276, 283 (1982) 5-6

Washington v. Fireman's Fund Ins. Companies, ___ Haw. ___, ___, 708 P.2d 129, 136 (1985) 1, 6

STATUTE:

Hawaii Rev. Stat. § 346-37 (Supp. 1982) 6

LEGISLATIVE HISTORY:

House Stand. Com. Rep. No. 775-76, House Journal at 1646. *See*, §§ 1 to 3, Act 80, SLH 1976 (S.B.No. 1838-76) 4

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OPINION BELOW

The opinion of the Supreme Court of Hawaii, *Washington v. Fireman's Fund Ins. Companies,* Nos. 9411 and 9965, is reported at 708 P.2d 129 (Hawaii 1985).

COUNTERSTATEMENT OF THE CASE

This case arises from the valid exercise of legislative powers by the Legislature of the State of Hawaii in initiating and implementing a comprehensive automobile insurance system in which all persons within the State of Hawaii would be covered by some type of benefit program for medical expenses and lost earnings incurred as a result of injuries sustained in automobile accidents.

Since 1973 the Legislature of the State of Hawaii has mandated that all operators of motor vehicles within the State must have a minimum insurance coverage (which includes a no-fault insurance provision) for their automobiles. However, at that time it was also recognized that indigent persons, i.e., public assistance recipients, are financially unable to comply with this statutory requirement. Therefore, as a cost of doing business within the State of Hawaii automobile insurers are required to issue automobile insurance policies, which include no-fault provisions, to public assistance recipients at no cost to the recipients or the State of Hawaii.[1] However, in doing so, the Legislature conceded that these free no-fault insurance policies do not include as beneficiaries public assistance recipients injured in automobile accidents. It was recognized that public assistance recipients are entitled to public assistance benefits from federal and state regulated assistance programs, and public assistance benefits already provide payments, to the greater extent, for those types of services available

[1] This cost is passed on to the purchasers of automobile insurance.

to persons covered under no-fault insurance policies. In other words, the free no-fault policies issued to public assistance recipients cover only those persons who are not public assistance recipients, and who are involved in an accident with a public assistance recipient. The Legislature of the State of Hawaii acknowledged that public assistance recipients, already covered by the public assistance program, have no need for additional no-fault coverage as their medical and lost earnings expenses are already covered by the public assistance program.

REASONS FOR DENYING THE WRIT

As found by the Supreme Court of the State of Hawaii in the proceedings on the merits, the statutes in question are justified on rational grounds. Thus, the petition for writ of certiorari should be denied.

The intended purpose or rational basis for exclusion of public assistance recipients from receipt of no-fault insurance from their own policies issued to them at no cost under the Joint Underwriting Program, or from policies issued to other public assistance recipients under the same program is to prevent a double recovery, and to preclude additional burdens upon the insured public/taxpayers, while at the same time to permit public assistance recipients to continue to operate their automobiles.

> The definition of "no-fault benefits" is amended to carry out the original intent of the Legislature in passing the No-Fault Act. The amended definition explicitly states that the no-fault benefits provided public assistance recipients do not include medical, rehabilitative, or income loss benefits, since these were already provided by the

> State. A double coverage or recovery was never intended. It was not the objective of the act to charge the insured public with such cost. This amended definition makes plain the intent of the Legislature that recipients be afforded sufficient coverage to permit their continued auto operations so as not to discriminate unconstitutionally; that their assistance, including medical services, should continue after an auto accident; and that neither the State nor all auto insurance buyers incur any heavier or additional cost in such coverage.

House Stand. Com. Rep. No. 775-76, House Journal at 1646. *See*, §§ 1 to 3, Act 80, SLH 1976 (S.B.No. 1838-76).

Neither is this rational basis threatened by the fact that Petitioners may have to reimburse the State totally for Medicaid disbursements when they make tort claim recoveries, or by the fact that no-fault coverage provides payments for some additional types of services. The comparison does not have to be precisely equal.[2]

> In the area of economics and social welfare, a state does not violate the equal protection clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the con-

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[2] If there is any inequity it would seem to fall upon the taxpayer who pays for his no-fault insurance. This person is not entitled to free, unlimited medical coverage that may continue until death absent a tort claim recovery, or may continue after the tort claim is exhausted. All the taxpayer/no-fault insurance purchaser is entitled to is $15,000.00.

> stitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsey v. National Carbonic Gas Co.*, 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accomodations—illogical, it may be and unscientific." *Metropolis Theater Co. v. City of Chicago*, 228 U.S. 61, 69-70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowen v. Maryland*, 366 U.S. 420, 426.

Dandridge v. Williams, 397 U.S. 471, 485 (1970).

Here the justification is clear. Taxpayers are not required to distribute windfalls to assistance recipients. Taxpayers already pay medical expenses for assistance recipients through the Medicaid program. The Legislature of Hawaii did not want auto insurance purchasers to provide Petitioners with benefits that would duplicate moneys already received.

Based on this the Hawaii Supreme Court found that precise duplication of some medical services available to paying no-fault policyholders and not to assistance recipients is not a denial of equal protection.[3]

> "[E]qual protection . . . is not an obligation to provide the best governance possible," and there is no constitutional demand "that a statute necessarily apply equally to all persons." *Shibuya v.*

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[3] Petitioners allege discrimination because chiropractic services are not paid for. However, osteopathic services, which encompass all services rendered by a chiropractor, are provided for under the Medicaid program

> *Architects Hawaii, Ltd.*, 65 Haw. 26, 35, 647 P.2d 276, 283 (1982). Even though some medical services are available to regular no-fault policyholders and not to public aid recipients under Medicaid (see footnote 4, *supra*), the disparity is not so great as to amount to a denial of equal protection. The means chosen under HRS Chapter 294 to accomplish the statutory purpose do bear a reasonable relationship to the purpose: public assistance recipients can obtain free no-fault insurance and medical benefits to compensate from accidental harm and to limit tort liability arising from motor vehicle accidents. (citation omitted)

Washington v. Fireman's Fund Ins. Companies, ___ Haw. ___, ___, 708 P.2d 129, 136 (1985).

With regards to Petitioners' contention of discrimination due to reimbursement of 100% of Medicaid payments rather than 50%, as required of persons who purchase their own insurance, the mandate of Hawaii Rev. Stat. § 346-37 is justified on grounds that assistance recipients pay nothing for no-fault coverage and Medicaid benefits, whereas all other persons do.[4] Having entirely free automobile insurance and public assistance benefits warrants reimbursement of Medicaid benefits by assistance recipients when they have obtained a tort recovery for their medical expenses paid for by Medicaid.

> Even though, in event of a tort recovery, DSSH must be reimbursed for 100% of all Medicaid payments received while a private insurer must be

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[4] Taxpayers/purchasers of no-fault insurance also pay for Petitioners' insurance and Medicaid benefits.

> subrogated for only 50% of all benefits obtained, HJUP can be justified on rational grounds. Because the automobile insurance buying and tax-paying public support the HJUP and Medicaid program, it is only fair and logical that the public aid recipient (who got the HJUP policy free) should be required to reimburse DSSH for all the benefits payed for by public money. A regular no-fault policyholder who has had to pay premiums out of his or her own pocket to retain insurance coverage and subsequently obtains a tort recovery is in a vastly different situation.

Id. at ___, 708 P.2d at 135-136.

CONCLUSION

The decision by the Hawaii Supreme Court is consistent with all relevant case law and legislative history. Therefore, Respondent, State of Hawaii, respectfully submits that the petition for writ of Certiorari be denied.

Respectfully submitted,

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